IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.879/2005

ORIENTAL INSURANCE CO. LTD. ..... Appellant
! through: Mr.Tarkeshwar Nath, Advocate.

VERSUS

$ Smt.Rajwati Devi & Ors. ..... Respondents
^ through: None

RESERVED ON : 16-04-2007

% **D**ATE OF DECISION: 18-04-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. On 24.10.1996, deceased Rajinder Prasad, aged 28 years died when the TSR bearing registration No.DL-IL-8661 which was being driven by him met with an accident. He was survived by wife, 2 children and mother.

2. It was pleaded by the dependents of the deceased that deceased was employed as a driver with respondent No.5, Ashok Kumar Dureja, (owner of the vehicle) and that he died during the course of his employment. Thus, they filed a claim petition under Section 140 read with 166 of the M.V. Act, 1988 claiming a

compensation from the owner and insurer of the vehicle.

3. As it was proved that accident in question was caused due to the overturning of the vehicle driven by the deceased and no other vehicle was involved in the accident, learned Tribunal treated claim petition filed by the dependents as one filed under Section 163A of the Motor Vehicles Act, 1988.

4. Wife of the deceased, Rajwati Devi stepped into the witness box as PW-3 and deposed that deceased was employed as a driver earning Rs.3000/- per month at the time of the accident.

5. Relying upon the testimony of the wife of the deceased, learned Tribunal has taken income of the deceased at the time of the accident as Rs.3000/- per month.

6. Giving benefit of future increase in the income of the deceased, mean monthly income of the deceased has been taken by the Tribunal as Rs.4500/- per month. Deducting 1/3rd towards personal spending of the deceased, average monthly dependence has been assessed by the Tribunal at Rs.3000/- per month. Deceased was aged 28 years at the time of the accident. Thus, as per IInd Schedule, multiplier of 18 has been adopted by the Tribunal. Thus, total loss of dependence has been assessed at Rs.6,48,000/-.

7. Under the head 'non-pecuniary damages', Tribunal has awarded a sum of Rs.15,000/-. Thus, total compensation awarded by

the Tribunal is Rs.6,63,000/-.

8. Aggrieved by the amount of compensation awarded by the Tribunal to dependents/respondents 1 to 4, insurance company has filed the present appeal.

9. Learned counsel for the insurance company had raised 2 contentions in support of his appeal.

10. The first ground urged by the insurance company is that while determining monthly income of the deceased at the time of the accident, learned Tribunal erred in relying upon the testimony of the wife of the deceased when there was no evidence on record to prove the income of the deceased.

11. I agree with the contention advanced by the learned counsel for the insurance company. In absence of clear and cogent evidence pertaining to income of the deceased, learned Tribunal should have determined income of the deceased on the basis of minimum wages notified under the Minimum Wages Act. As the deceased was employed as a driver, I place him in the category of skilled labourers. Minimum wages for skilled labourers as on 1.2.1996 was Rs.2,101/- per month. (rounded off to Rs.2100/- per month). I adopt this figure as the monthly income of the deceased at the time of the accident.

12. Learned counsel for the insurance company next submits that while determining loss of dependence, Tribunal erred in giving

benefits of future increase in the income of the deceased. Counsel further contends that as the Tribunal has treated claim petition as one filed under Section 163-A, compensation had to be computed strictly in accordance with IInd Schedule appended to the Motor Vehicles Act, 1988.

13. I agree with the learned counsel for the appellant inasmuch as the Tribunal ought to have determined compensation strictly in accordance with IInd Schedule as it has treated the petition as one filed under Section 163-A of the Motor Vehicles Act, 1988.

14. However, it is pertinent to note clause 3 of Section 163-A. Clause 3 of Section 163-A reads as under :-

> "(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

15. IInd Schedule was appended to the Motor Vehicles Act in the year 1994. Unfortunately, Government has not exercised its power provided under Clause (3). Thus, IInd Schedule remains unamended since the date of its inception till today.

16. I note that from year 1994 to today, inflation has gone up by 4% to 6% each year. Keeping in view the rise in inflation and cost of living and the fact that the Government has not amended IInd Schedule, I think it appropriate to give benefit of 25% increase in the income even as per the IInd Schedule. Thus, I take mean monthly income of the deceased as Rs.2,363/-. (Rs.3000 + Rs.2,625/- (25%

increase in income) ÷ 2 = Rs.2,363/-.

17. Deducting 1/3rd towards personal spending of the deceased, loss of dependence works out to Rs.1,575/- per month.

18. IInd Schedule provides for a multiplier of 18 in the case of deceased aged between 25 to 30 years. As the deceased was aged 28 years at the time of the accident, I apply multiplier of 18. Thus, total compensation works out to Rs.3,40,200/-. Adding Rs.15,000/- as awarded by the Tribunal under the head 'non'pecuniary damages' total compensation is assessed at Rs.3,55,200/-.

19. I note that dependents had claimed a compensation of Rs.3,00,000/- on account of death of deceased in the said road accident. In this regard, suffice would it be to note the judgment of the Supreme Court reported as *Naggappa Vs. Guru Dayal Singh* 2003 ACJ 12. In the para 7 of the report Supreme Court has observed as under :-

> "Firstly, under the provisions of M.V. Act, there is no restriction that compensation could be awarded only upto the amount claimed by the claimants. In an appropriate case where from the evidence brought on record if Tribunal Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is -------- It should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful or unjusticiable from the evidence."

20. Tribunal has awarded pendente lite and future interest @ 9% per annum. The award is dated 18.8.2005. At that time,

nationalized Banks were offering interest @ 6% per annum. Therefore, I modify the award to the extent that pendente lite and future interest shall carry an interest @ 6% per annum.

21. Accordingly, appellant insurance company is liable to pay a compensation of Rs.3,55,200/- together with interest @ 6% p.a. from date of claim petition till date of realisation. Award is modified to that extent.

22. Appeal is accordingly disposed of.

23. No costs.

April 18, 2007
sl/vg

PRADEEP NANDRAJOG
JUDGE.